UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 01

VAN POOL TRANSPORTATION, LLC

Employer

and **Case 01-RC-215204**

GENERAL TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF BROCKTON & VICINITY, LOCAL 653

Petitioner

DECISION AND DIRECTION OF ELECTION[1]

The only issue presented in this case is whether the petitioned-for unit, limited to employees at the Employer's Duxbury, Massachusetts facility, is an appropriate unit for bargaining, or whether the unit also must include employees at the Employer's other facility located in Wrentham, Massachusetts. The parties agree that in either event the appropriate unit should include all drivers and monitors.

For the reasons set forth below, I find that the petitioned-for unit limited to van drivers and monitors employed at the Employer's Duxbury facility is appropriate.

THE EMPLOYER'S OPERATIONS

The Employer is engaged in the transportation of special needs students to special education programs, some within and some outside the students' home school districts. The Employer's operations include facilities located in Duxbury and Wrentham.[2] These facilities are about 47 miles from one another. There are approximately 75 employees in the petitioned-for unit, and 375 employees in the unit proposed by the Employer.

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[1] The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

[2] The Duxbury location was created when the Employer acquired an existing student transportation company, Judco, along with its facility, vans, and employees in July 2017.

The Employer's transportation is done in passenger vans or, in some cases, vans equipped to accommodate wheelchairs. Each van has a driver. In some instances, the school district also requires a monitor to accompany a particular child in the van. Since monitors are assigned to a particular child, not to all children in a van, there may be more than one monitor in a van if the route services multiple children (the maximum allowed children in a van is eight).

The Duxbury and Wrentham locations each services its own set of area school districts,[3] although the Employer's Vice-President of Operations, Michael Frambach, testified that there is about a 20% overlap in routes serviced by Duxbury and Wrentham. Of Duxbury's and Wrentham's destination schools, 19 are served by routes run out of both locations; the record is silent on the total number of destination schools served. Duxbury services about 60-65 routes with about 62 drivers and about 12-13 monitors; it also has 4 standby drivers but no standby monitors. Wrentham services about 260 routes with about 250 drivers and about 50 monitors; it has no standby drivers or standby monitors.

The number of routes that need to be covered on any given day by each location is somewhat dynamic. In part, this is because a school district may increase the number of students that need to be transported. In addition, some routes only pick up one child, and sometimes that child will not need transportation that day due, e.g., to illness, a teacher's administrative day, or a parent electing to transport the child him or herself.[4] The number of drivers and monitors available each day is also variable, due to, e.g., employee call-outs or vacations.

Drivers and monitors do not report daily to the Duxbury or Wrentham facilities. Rather, drivers take their vans home at night and begin the next day's route from home.[5]

BOARD LAW

The Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged or is so functionally integrated that it has lost its separate identity. The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness. To determine whether the single-facility presumption has been rebutted, the Board examines: (1) central control over daily operations and labor relations, including the extent of local autonomy; (2) similarity of employee skills, functions, and

[3] The towns assigned to the Wrentham location include Wrentham, Norfolk, Plainville, Attleboro, Norton, Brockton, Bridgewater, Taunton, Dedham, and Needham. The towns assigned to the Duxbury location are Duxbury, Plymouth, Pembroke, Halifax, Carver, Abington, Hingham, Whitman, Hanson, Rockland, and Norwell.

[4] For Wrentham, about 18% of the vans transport a single child, and the student call-out rate is about 8-10% for about 600 students. (The student call-out rate for Duxbury is somewhat less than Wrentham, although by how much is not clear in the record, and the record is silent on the total number of students or the single-child-van numbers for Duxbury.) Applying these figures, about 46-47 of Wrentham's about 260 routes are for a single child. With a student call-out rate of 8-10%, that would mean that each day about 4-5 Wrentham routes do not need to be covered.

[5] The record is silent on where drivers pick up their assigned monitors.

working conditions; (3) the degree of employee interchange; (4) the distance between locations; and (5) bargaining history, if any exists. See, e.g., *Trane*, 339 NLRB 866 (2003); *J &L Plate, Inc*., 310 NLRB 429 (1993).

Application of Board Law to this Case

In reaching the conclusion that the single-facility unit is appropriate, I rely on the following analysis and record evidence.

1. Central Control Over Daily Operations and Labor Relations

The Board has made clear that "the existence of even substantial centralized control over some labor relations policies and procedures is not inconsistent with a conclusion that sufficient local autonomy exists to support a single local presumption." *California Pacific Medical Center*, 357 NLRB 197, 198 (2001) (citations omitted). Thus, "centralization, by itself, is not sufficient to rebut the single-facility presumption where there is significant local autonomy over labor relations. Instead, the Board puts emphasis on whether the employees perform their day-to-day work under the supervision of one who is involved in rating their performance and in affecting their job status and who is personally involved with the daily matters which make up their grievances and routine problems." *Hilander Foods*, 348 NLRB 1200, 1203 (2006) (citations omitted). Therefore, the primary focus of this factor is the control that facility-level management exerts over employees' day-to-day working lives.

The Employer's Duxbury and Wrentham locations are overseen by Vice-President of Operations Micheal Frambach. Both Duxbury and Wrentham have an operations manager who reports directly to Frambach, respectively Michael Addams and Monica Puetthoff; these operations managers are the only supervisors at their respective location.[6] Addams and Puetthoff are each responsible for employee discipline short of final written warnings (counseling, verbal warnings, and written warnings) at their respective location; Frambach must approve final written warnings, suspensions, and terminations.

In cases of temporary employee transfers from Wrentham to Duxbury (described below), when a driver and/or monitor is involved in a work incident, that employee(s) must complete an incident report for Addams. In such a situation, however, although Addams may recommend discipline to Puetthoff for a Wrentham employee temporarily assigned to Duxbury, it would be Puetthoff's determination whether to impose any discipline on that employee.[7]

[6] At the hearing the parties stipulated that both Addams and Puetthoff are 2(11) supervisors under the Act; the Employer specifically noted these individuals' authority to responsibly direct, but qualified this stipulation so as not to include the authority to hire and fire. However, according to Frambach's testimony and as mentioned below, Addams and Puetthoff each clearly has the authority to hire.
[7] Framach testified that this has not occurred, although his statement of the respective disciplinary authority of Puetthoff and Addams in such a situation is unequivocal.

A human resources recruiter, Gail Lydon, works out of Duxbury. She recruits and does hiring for both Duxbury and Wrentham. A human resources generalist, Jane Perrault, works out of Wrentham. She is responsible for general human resources for both Wrentham and Duxbury. Both Lydon and Perrault report directly to Frambach, not to either Addams or Puetthoff. Hiring is primarily done by Lydon, but in some instances, Addams and Puetthoff conduct second interviews, after which they each have the authority to hire. There is no evidence that Addams ever hires for Wrentham, or that Puetthoff ever hires for Duxbury.

The Employer conducts training for drivers and monitors at the onboarding stage every two weeks and for periodic recertification of particular drivers and monitors about once a month. Training for Duxbury and Wrentham employees is done by regional training manager Roger Bourassa at the Wrentham location. Duxbury and Wrentham employees are often trained together, although if the classes are big enough they will be trained separately.

The same employee handbook is used at both Duxbury and Wrentham. In addition, the same documents providing the job description, essential job duties, and physical requirements for drivers and for monitors applies to both Duxbury and Wrentham.

Duxbury and Wrentham drivers and monitors are largely paid under the same standard compensation plan. The exception is an unspecified number of Duxbury employees who previously worked for the predecessor Judco, and given the choice, elected to continue being paid their Judco wages.[8] While not being able to specify the number of Duxbury employees this covers, Frambach ventured that it may be about 20% of the about 75 Duxbury drivers and monitors. Since acquiring Judco in July 2017, the Employer has hired 23 new Duxbury drivers and monitors; these employees are all paid under the standard plan. Frambach testified that Duxbury and Wrentham drivers and monitors are all eligible after one year to participate in the Employer's 401(K) plan and all receive the state-mandated number of paid sick days, and that no other employee benefits are provided to drivers and monitors.

While the facilities in dispute here are all subject to the same training, employee handbook and job descriptions, employee benefits, and (largely) wage plan, these facilities have distinct supervision and significant local-level autonomy. In this regard, the supervisors at each facility have the authority to hire and discipline at their respective locations. I therefore find that the evidence of centralization is not sufficient to rebut the single-facility presumption in light of the significant local autonomy over labor relations. *Hilander Foods*, supra.

2. Similarity of Skills, Functions, and Working Conditions

The similarity of work, qualifications, working conditions, wages and benefits between employees at the facilities the Employer contends should be in the unit has some bearing on determining the appropriateness of the single-facility unit. However, this factor is less important

[8] Frambach testified that the Employer's starting wage for drivers and monitors with no experience in Duxbury and Wrentham is $14.00 an hour, and that when the Employer acquired Judco, the pay range for Judco's drivers and monitors was about $13.00 - $17.00 an hour.

than whether individual facility management has autonomy and whether there is substantial interchange. See, for example, *Dattco, Inc*., 338 NLRB 49, 51 (2002) ("This level of interdependence and interchange is significant and, with the centralization of operations and uniformity of skills, functions and working conditions is sufficient to rebut the presumptive appropriateness of the single-facility unit.")

With the exception of working from geographically separate facilities, employees at the facilities in dispute share identical skills, functions, and working conditions. These employees perform the same work, share identical qualifications, work under the same handbook, receive identical benefits, and, with the exception of the Duxbury employees who have elected to retain their Judco wages, are hourly paid with wages determined under the same criteria. Again, however, this factor is less important than whether individual facility management has autonomy and whether there is substantial interchange.

3. Functional Integration

Evidence of functional integration is also relevant to the issue whether a single-facility unit is appropriate. Functional integration refers to when employees at two or more facilities are closely integrated with one another functionally notwithstanding their physical separation. *Budget Rent A Car Systems*, 337 NLRB 884 (2002). This functional integration involves employees at the various facilities participating equally and fully at various stages in the employer's operation, such that the employees constitute integral and indispensable parts of a single work process. Id. However, an important element of functional integration is that the employees from the various facilities have frequent contact with one another. Id at 885.

Here, the only evidence of functional integration between Duxbury and Wrentham is some overlap in the schools and routes served by the two locations. I find that the limted degree of functional integration present here is insufficient to rebut the single-facility presumption.

4. The Degree of Employee Interchange and Contact

A significant factor in determining the appropriateness of a petitioned-for single-facility unit is employee interchange, i.e., the degree of permanent or temporary transfers between employees at the petitioned-for location and the additional location(s) that the Employer seeks to include in the unit. However, a significant portion of the work force must be involved and the work force must be actually supervised by the local branch to which they are not normally assigned in order to meet the burden of proof on the party opposing the single-facility unit. *New Britain Transportation Co*., 330 NLRB 397, 398 (1999).

Here, there is no evidence of permanent transfers between the two locations. Nor does the record establish a significant degree of temporary interchange between the Duxbury and Wrentham locations.

With respect to temporary interchange, the Employer points to its practice of covering uncovered routes in Duxbury with Wrentham drivers and/or monitors, which occurs when a

Duxbury driver or monitor is absent due to illness, vacation, etc. and no standby Duxbury employee is available. Importantly, there have never been similar transfers from Duxbury to Wrentham.

According to Frambach, drivers from the Wrentham location are temporarily transferred to cover Duxbury routes about 12-18 times per week, about 40-50 times per month, and about 600 times per year; and Wrentham monitors are similarly transferred to Duxbury about 2-4 times per week.[9] More proximately, Frambach testified that, in the week prior to the hearing, the Employer temporarily transferred six monitors and "at least four" drivers from Wrentham to Duxbury. I note that the Employer presented no documentary evidence of temporary interchange between the two locations and that its evidence was limited to Frambach's testimony.

The Employer argues that the 12-18 driver transfers per week from Wrentham to Duxbury amounts to a percentage of employee interchange of about 19-29%. This calculation is highly misleading because it fails to account for the fact that Duxbury's 60-65 routes run five days a week, or about 300-325 times per week. Thus, the 12-18 Wrentham drivers are weekly covering about 4-6% of the Duxbury routes. Accordingly, the degree of interchange here is not substantial.

As for contact between the Duxbury and Wrentham employees, drivers begin and end their workdays at their home and do not report to a facility in either Duxbury or Wrentham. Thus, a driver without one or more monitors on his or her van essentially works alone, with no possibility of employee contact.

On routes where one or more monitors are assigned, drivers and monitors share the same workplace – the van – during their workday. Thus, when a Wrentham driver is assigned to a route with a Duxbury monitor, or a Wrentham monitor with a Duxbury driver, this shared workplace may present some level of employee contact between Duxbury and Wrentham. The Employer, however, has presented no evidence about the level or nature of driver-monitor interaction. Further, I note that the possible incidence of this Duxbury-Wrentham interchange is quite limited. Rather, the number of monitors regularly employed at Duxbury, and thus, the number of students there who are assigned monitors, is about 12-13; which means about 20% of students transported at the Duxbury location are assigned monitors.[10] These figures indicate that in the vast majority of cases of a Wrentham-to-Duxbury transfer, approximately 80% of the time there is no Wrentham-Duxbury driver-monitor interchange. Combined with the respective numbers of weekly Wrentham-to-Duxbury transfers (about 12-18 drivers, about 2-4 monitors) out of the total number of weekly Duxbury routes (about 60-65 a day, 5 days a week, for a total

[9] Frambach's testimony was unclear on who is ultimately responsible for making these transfers: at one point he seemed to say that it was his responsibility, but later said that it was among the responsibilities of the operations managers. At any rate, it appears that the process of reassignment from Wrentham to Duxbury is done in some collaborative fashion between Addams (who would be making the request for coverage) and Puetthoff and Frambach (determining who to transfer).

[10] This is not necessarily the number of routes that are assigned monitors, because, as noted above, there may be more than one monitor on a van.

of about 300-325 weekly routes), it appears that the level of Wrentham-Duxbury employee interchange and employee contact is relatively small.

At the hearing, the Employer's counsel attempted to elicit, via leading questions, testimony from Frambach about the parking lots of the 19 destination schools served by both Duxbury and Wrentham drivers being de facto "common work areas," where Duxbury and Wrentham drivers and monitors can congregate and talk while waiting for their students to be released at the end of the day. In its brief, the Employer argues that this contact amounts to significant employee interchange. In addition to the fact that Frambach's brief testimony on this subject is underdeveloped and vague, this simply is not evidence of employee interchange. See *D&L Transportation*, 324 NLRB 160, 161 (1997) (incidental contact of drivers at drop-off schools is not evidence of employee interchange).

The Employer further argues that the 20% overlap in Duxbury and Wrentham routes means that drivers are sharing the same roads, and that this amounts to employee interchange. Similarly, this simply does not qualify as evidence of employee interchange.

The cases relied on by the Employer are clearly distinguishable. In *Trane*, supra, the Board's finding that the Employer had rebutted the single-facility presumption was based in significant part on the fact that the facilities considered there had *no* local autonomy. 339 NLRB at 868. Even the level of employee interchange, about which the Board stated that the evidence was limited, was greater than that presented here. Id. at 867-88.

WeCare Transportation, LLC, 353 NLRB 65 (2008), cited by the Employer, is a decision that issued at a time when the Board lacked a quorum and hence is not valid precedent. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010). Even if it were valid precedent, the facts in *WeCare* are distinguishable. There, the Board considered a waste hauling company with terminals in Canaan and Weedsport, New York; the petitioner there was seeking a single facility unit in Canaan. The Board found significant employee interchange and functional integration based in part on the fact that up to almost 80% of Canaan drivers ran the same routes and service the same customers on days of temporary transfer as Weedsport drivers, 75% of Canaan drivers daily hauled waste to the same landfill that nearly all Weedsport drivers did, and that both groups of drivers regularly stopped at the Weedsport terminal. 353 NLRB at 67. These interchange numbers are not comparable to those presented here. Further, unlike the facts presented here that establish local autonomy over the facilities at issue, the Board, in that case, found that the Canaan facility had no significant local autonomy. Id. at 68.

5. Distance Between Locations

While significant geographic distance between locations is normally a factor in favor of a single-facility unit, it is less of a factor when there is evidence of regular interchange between the locations, and when there is evidence of centralized control over daily operations and labor relations with little or no local autonomy, particularly when employees at the facilities otherwise share skills duties, and other terms and conditions of employment, as well as are in contact with one another. *Trane*,supra at 868.

As stated above, the facilities in dispute in this matter are about 47 miles from one another. In view of my conclusions regarding the above factors, I conclude that the distance between locations further supports my conclusion that the single-facility unit sought by Petitioner is an appropriate one.

6. *Bargaining History*

The absence of bargaining history is a neutral factor in the analysis of whether a single unit facility is appropriate. *Trane*, supra at 868, fn. 4. Thus, the fact that there is no bargaining history in this matter does not support nor does it negate the appropriateness of the unit sought by the Petitioner.

CONCLUSION

In determining that the single-facility unit sought by Petitioner is appropriate, I have carefully considered the record evidence and weighed the various factors that bear on the determination of whether a single-facility unit is appropriate. In reaching my conclusion that the single-facility unit sought by Petitioner is appropriate I rely, in particular, on the local autonomy over labor relations, separate supervision, and lack of significant employee interchange between Duxbury and Wrentham. Therefore, based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time van drivers and monitors employed at the Employer's Duxbury, Massachusetts location but excluding managers, office clericals, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by General Teamsters, Chauffeurs, Warehousemen and Helpers of Brockton & Vicinity, Local 653.

A. Election Details

The election will be held on Wednesday, April 4, 2018 from 9:30 a.m. to 1:00 p.m. and from 5:00 p.m. to 7:00 p.m. at the human resources office at the Duxbury location, 20 Tremont Street, Suite 1, Duxbury, MA.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending Friday, March 16, 2018, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by Tuesday, March 27, 2018. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.
Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: March 23, 2018

/s/Paul J. Murphy

PAUL J. MURPHY
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